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SEEK KENG LEONG

v.

BURSA MALAYSIA SECURITIES BHD & ANOTHER CASE

B

HIGH COURT MALAYA, KUALA LUMPUR
ABANG ISKANDAR J
[JUDICIAL REVIEW NO: R1-25-512-2010 & R1-25-515-2010]
2 MAY 2012

C

ADMINISTRATIVE LAW: *Judicial Review - Application for - Decision of Bursa Malaysia - Applicants found guilty of breaches of listing requirements by appeal committee of Bursa Malaysia - Respondent imposed fines and orders of restoration - Whether orders of restoration* D *without proper legal basis - Whether respondent erred in finding applicants guilty of breaches*

The two applications herein were heard together and the two applicants were Seek Keng Leong and Goh Bank Ming while the respondents in Application No. R1-25-512-2010 and Application E No: R1-25-515-2010 were the same party, Bursa Malaysia Securities Berhad ('Bursa'). The applicants were seeking to quash the decisions made by the Appeal Committee ('AC') of the Bursa that had found them guilty of breaches of the Listing Requirements ('the LR') and had proceeded to impose penalties, F namely fines and orders of restoration against the applicants for the said breaches. The main issues deliberated by the court in the proceedings were (i) whether the sanctions imposed by the Bursa, specifically the orders of restoration against the applicants were without proper legal basis and (ii) whether the Bursa had erred in G finding the applicants guilty of breaches.

Held (allowing appeal partially with orders on restorations quashed; affirming other orders):

H **(1)** Whatever power of sanctions that the Bursa is competent to impose on a person who has been found guilty of any breach of the LR must be expressly provided for. The power to impose a fine is expressly provided in the LR. However, there is nothing that is contained in the LR that can be used as a I legitimate basis upon which an opinion can be safely and soundly predicated to say that the Bursa is properly clothed with the necessary jurisdiction to impose an order of restitution against both the applicants. (para 3)

(2) In addition, s. 35 of the Capital Markets and Services Act 2007 expressly states that a restitution order, an order that is very similar if not synonymous with an order of restoration, can only be obtained from the court. (para 3)

(3) Bursa as an independent body is entitled to carve out its own in-house procedure and there is no law to say that all hearings must be by way of oral hearing and nothing else. There is also no law to say that any departure from that regime must mean that the whole proceeding must be struck down as being void and of no effect on account of breach of natural justice. (para 6)

Case(s) referred to:

Pengarah Tanah Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143 FC ***(refd)***

Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union [1995] 2 CLJ 748 CA ***(refd)***

Tengku Dato' Kamal Ibni Sultan Sir Abu Bakar & Ors v. Bursa Malaysia Bhd [2010] 6 CLJ 581 HC ***(refd)***

Legislation referred to:

Capital Markets and Services Act 2007, s. 35

Federal Constitution, art. 8

[Case No: R1-25-512-2010]

For the applicant - Razlan Hadri; M/s Gan Ho & Razlan Hadri

For the respondent - Ruth Garnet Maran (Ong Doen Xian with her); M/s Skrine

[Case No: R1-25-515-2010]

For the applicant - Brian Cumming (Yap Yoon Jan with him); M/s Gideon Tan Razali Zaini

For the respondent - Ruth Garnet Maran (Ong Doen Xian with her); M/s Skrine

Reported by Baizura Abd Razak

JUDGMENT

Abang Iskandar J:

[1] This has been an application by the two applicants to quash the decisions made by the Appeal Committee ('the AC') of the Bursa that had found them guilty for certain breaches of the listing

requirements ('the LR') and had proceeded to impose penalties on them for such breaches. Few issues were raised by both applicants in challenging the said adverse decisions.

[2] The facts in both these cases are not in dispute and are well known to all parties concerned and as such I do not wish to reproduce them here. They had been sufficiently alluded to in the written submissions of all litigating parties. Rather, it had been the way in which these facts had been dealt with by the respondents ('the Bursa') in relation to both the applicants that had since become the subject matter of these proceedings before this court. Indeed, both the applicants had complained to this court that essentially the Bursa had improperly, in contravention of the principles of natural justice, found them guilty of the LR and that the terms of the sanctions that were imposed by the Bursa, specifically the orders of restoration against the applicants, were without proper legal basis.

[3] Having heard the submissions by all learned counsels, I am of the considered view that both the appeals ought to be and are hereby allowed partially and that the impugned decisions of the Bursa are ordered to be varied to the following extent, namely, that the orders on restorations made against both applicants in their respective case are hereby quashed, as being orders which to the mind of this court, had been imposed against each of the applicants based on an erroneous appreciation of the respondent's powers to impose such a sanction. The other findings and orders made in the decisions against the two applicants are hereby maintained and affirmed as they have been properly arrived at by the respondents Bursa in accordance with the law. As regards the variation to that extent as alluded to above, relating to the order on restoration or restitution, it was made by this court based on the following considerations:

(1) A perusal of the LR provisions that deal with penalties that can be imposed by the Bursa would reveal that they do not expressly provide for such a restoration order. The AC had referred to the specific provisions under para. 16.17 of the LR when the Bursa had purportedly acted to impose the impugned restoration order against both the applicants. It was submitted by the learned counsel for the Bursa that such an order could be made under the auspices of para. 16.17 of the

LR. Both learned counsels for both applicants had submitted that such a provision as contained therein could not confer on the Bursa such far reaching order. With respect, I agree with the applicants' stand on this issue. Looking at the said paragraph in totality, it is clear that the Bursa can impose a fine not exceeding RM1 million. The learned counsel for the Bursa had urged this court to employ the purposive rule in approaching the task of deciphering the true intention of the drafters of the LR with regard to the extent of the legal reach of para. 16.17 thereof. From that alone, it is most unlikely, to say the least, that the drafters of the LR could have intended for the Bursa to be competent to make an order of restoration without any express provision to that effect spelt out in the LR. I say this because even the power to issue a reprimand, which, it must be said would be a most non-intrusive of sanctions, is provided for expressly and specifically in the LR as appear in para. 16.17(1)(b)(ii) for a private reprimand and sub-paragraph (iii) for a public reprimand. The power to impose a fine not exceeding RM1 million is expressly provided for in sub-paragraph (iv) therein. In other words, whatever power of sanctions that the Bursa is competent to impose on a person who has been found guilty of any breach of the LR must be expressly provided for. With respect, this court is unable to accede to the submission by learned counsel for the Bursa that the power to order a restoration against the applicants can be founded upon the existing provisions as contained under para. 16.17 of the LR. Reference was made by learned counsel, in the course of his able and persuasive submissions before this court, that due regard must be had to para. 2.05 of the LR under the shoulder note "spirit of these requirements" which stated that these LR shall be interpreted in accordance with their spirit, intention and purpose and that in so interpreting, the approach to be taken ought to be one that would best promote the principles on which they were based. This court is mindful of that exhortation as contained in the LR, but this court is of the view that such provision cannot be utilized as a platform to mete out a sanction of such a nature such as that of a restoration order. If the drafters of the LR were minded to clothe the Bursa with such power to impose an order of restoration, such intention ought to have found clear expression embedded within the four

corners of the LR itself. In the parent Act, namely the Capital Markets and Services Act 2007 ('the CMSA') restitution order can only be obtained from the court. It would be most incongruous to say the least that a subsidiary legislation in the form of the LR could be said to contain within its spirit that can be invoked as a justification to impose an order of restoration when no express provision as such can be found in the relevant paragraph in the LR. It cannot be denied that the order of restoration is penal in effect *vis-à-vis* the person on whom it is imposed. The accepted canon of interpretation of statute, where it concerns a legislation of a penal nature, is that such a provision that was intended to create an obligation or create a penal sanction on any person upon due proof of a commission of a predicate offence, must be clearly and unambiguously expressed in no uncertain terms. There must be no room for doubt. There should be no hidden hands that could be used to smack down an offender however guilty. Any intended sanction of a penal nature must be provided for up-front and it must be transparent for all and sundry to see. A provision which seeks to attach penal or pecuniary sanction on a person must state clearly what obligation or sanction it seeks out to impose on the person who has breached its provision. The penalty must be spelt out in no uncertain terms and cannot be subject to any doubt as to its intended penalty. Any lingering doubt as to its intention on penal sanction must be resolved in favour of the offender and against the enforcer of the legislative provision. Looking at the overall scheme in the LR providing for a range of penalties that can be imposed by the Bursa, clearly to my mind, an order of restoration is not one penalty or order that was contemplated by the drafters of the said LR. An order such as an order of restoration is too huge an order for the drafters to omit to so provide expressly in the LR. So, by the sheer nature of a restoration order, it is this court's considered view that there is nothing that is contained in the LR that can be used as a legitimate basis upon which an opinion can safely and soundly be predicated upon for saying that the Bursa is properly clothed with the necessary jurisdiction to impose an order of restoration in the nature of the order which the Bursa had imposed against both the applicants in these two cases.

In the case of *Pengarah Tanah Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] 1 LNS 143, two basic legal principles yet so important to the very concept of public administrative law itself were reiterated by the court, namely that no one shall be deprived of his property except in accordance with the law and that in exercising of discretionary power conferred on a public official, there is no room for wanton arbitrariness. While the former finds itself as a constitutional safeguard under art. 8 of our Federal Constitution, the second principle is grounded upon principles of natural justice. In fact, at the High Court level in that case, learned Justice Harun Hashim J (as he then was) had said as follows: "The gist of these authorities may be summarised as follows: No person shall be deprived of his property by a mere executive, administrative or prerogative act. If the executive takes the property of any person it must be prepared to justify that act under the authority of a valid law." This court could not find any judicial pronouncement any more lucid and clear than those strong words, so typical of the learned Justice Harun Hashim J (as he then was).

(2) Again, looking at the Capital Markets and Services Act 2007 ('the CMSA') s. 35 therein expressly provides that a person wishing to obtain an order of restitution, an order that is very similar, if not synonymous with an order of restoration, must apply to the court for such an order. In that regard, it is noted that even the securities commission, which undoubtedly is the principal regulator of the capital market as created by the relevant statute, must also go to court and apply for an order of restitution if such a need arises in its enforcement action against person whom it has found to have contravened the relevant provisions of the CMSA. The learned counsel for the Bursa had referred this court to two decisions of the High Court in Kuala Lumpur which had enforced an order of restitution imposed by the Bursa. Those two cases are (1) *Bursa Malaysia Securities Bhd v. Tengku Dato Kamal Ibni Sultan Sir Abu Bakar & Ors* (grounds of judgment of Yang Arif Dato' Abdul Aziz bin Abdul Rahim dated 18 December 2010) and (2) *Tengku Dato' Kamal Ibni Sultan Sir Abu Bakar & Ors v. Bursa Malaysia Bhd* [2010] 6 CLJ 581 (grounds of Judgment dated 18 January 2010 of YA Hadariah Syed Ismail). Be that

A as it may, however, it cannot escape notice that in those two cases, the issue before the learned justices was not concerned with the propriety or otherwise of the order of restitution *per se*. Those cases were however, concerned with the issue of non-compliance of orders of restitution that had been imposed B on them. In that sense, those cases, with respect cannot be of any great assistance, if at all, to the Bursa.

The complaint by both the applicants in these cases immediately obtaining before this court, on the other hand, C had been premised on a direct challenge against the very fundamental issue which is that it was their contention that the Bursa had, *ipso facto*, no power to impose the order of restoration against them. The learned counsel for the Bursa had submitted that para. 16.17(1)(b)(vi) and (viii) LR was D couched in such a way that clearly "there was nothing on the face of it that limits Bursa's power". Perhaps, it would be opportune now to reproduce those sub-paragraphs for ease of reference: "(vi) imposition of one or more condition(s) **for compliance**; (viii) any other action which the exchange may E deem **appropriate**. (emphasis added) The learned counsel for the Bursa went on to submit that Bursa should not be limited in exercise of its powers which he said were broad. He went on to say that this ought not to surprise anyone due to the nature of Bursa's responsibility to monitor the capital market F and that the Bursa ought to be left to its discretion as to determine what appropriate action to resort to in dealing with all kinds of situations depending on the nature of the breach. To this the learned counsel for the applicants had responded by saying that sub-para. (vi) refers to power of the Bursa to G impose condition(s) in order to ensure compliance of the prior order on imposition of the sanction(s) as enumerated in the **preceding** sub-paragraphs, for example, an imposition of a hefty fine. An example of such a condition as envisaged by sub-paragraph (vi) would take the form of a time frame within H which to pay the hefty fine or the mode of payment of the said fine. As to sub-para. (viii) although the language may appear, at first blush, to be conferring on the Bursa, a wide range of 'other actions' that it may deem appropriate to take, those actions are not spelt out expressly. The learned counsel I for the applicants had submitted that in that kind of situation

as presented by that sub-para. (viii), those 'other actions' could not be 'larger' than those sanctions which have been spelt out in the preceding subparagraphs in para. 16.17. Having considered those submissions by both parties, with respect, this court is with the applicants on that score. This court found the submissions put forth by the Bursa on this matter of the true meaning of the referred sub-paragraphs in para. 16.17 as being tenuous and could not, by virtue of the penal nature of the restoration orders, be interpreted so liberally as to include such huge and hefty orders of restoration. To reiterate, such an order must have as its fountain of origin, in the clearest and express provision to that effect in the LR, In this case, no such well, let alone a fountain, exists in the LR as they stood at the material time, when the impugned restoration orders were meted out against the applicants.

(3) It was also submitted by the learned counsel for Bursa that the court ought to be slow in second guessing what would be the better action to be taken against an offender of the LR. In other words, there should not be unnecessary fetters on the way in which the Bursa ought to exercise its powers, being the frontline regulator of the capital market, so as to maintain investors' confidence and stability in the capital market. This court generally would ascribe to that approach as a matter of course. Indeed our superior courts and courts in other mature capital markets have been in favor of giving the regulator in the position of the Bursa a rather 'free hand', in discharging it's onerous functions. Nevertheless, having said that, in the context of the restoration order, this court is of the respectful view that on the Bursa has laid the onus of demonstrating to this court that it has the necessary power to impose such order of restoration. If there was indeed such a power conferred on the Bursa, then this court will be rather slow indeed in second guessing what ought to be the better option on sanction, in exercising that power in the name of proper regulation of the capital market. Indeed, the Bursa without any doubt would be better placed to make the right calls within its enforcement and regulatory framework to deal with the offender. However, this court has found that the Bursa has failed to prove that it was properly clothed with the

necessary power to issue such a restoration order on each of the applicants in these two cases before this court. This court was referred to the affidavit in reply by one Madam Yew Yee Tee on behalf of Bursa, in particular to para. 53 therein. That pertinent paragraph had read as follows:

> I say that the powers of Bursa are intended to be exercised to protect the investor public's interest and to ensure the investor public's confidence in the capital market. It is therefore essential that Bursa, as the front line regulator of the capital market be **at liberty to exercise its powers unencumbered and unfettered** to so monitor compliance of the LR and take the necessary action when there is a breach of the LR. **Any interference of these powers and functions** would have far-reaching and profound consequences as to the viability and the maintenance of a credible and transparent capital market in which the investor public should have the confidence to invest (emphasis added)

At this juncture, suffice it is to remind ourselves that an unfettered discretion is but a myth. The learned Acting Chief Justice (Malaya) Raja Azlan Shah had once debunked that myth when he had said that 'an unfettered discretion is a contradiction in terms' in the Supreme Court case of *Pengarah Tanah dan Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] 1 LNS 143. Coincidentally, the Supreme Court in that case was confronted with a complaint relating to the purported exercise of what the Chairman of the Land Executive Committee had deemed to be his unfettered discretion in setting out conditions on the use of a piece of alienated land. This is what the learned Ag. Chief Justice had said at p. 148 of the report: "l read the affidavit of the Chairman, Land Executive Committee as claiming an unfettered discretion to grant or reject any application under s. 124 or impose such conditions or other requirements as the committee think fit. I cannot subscribe to this proposition for a moment. Unfettered discretion is a contradiction in terms. My understanding of the authorities in these cases, and in particular the case of *Pyx Granite (ante)* and its progeny compel me to reject it and to uphold the decision of the learned judge. It does not seem to be realized that this argument is fallacious. Every legal power must have legal limits,

otherwise there is dictatorship. In particular, it is a stringent requirement that a discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene. The courts are the only defence of the liberty of the subject against departmental aggression. In these days when government departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizen; so that the courts can see that these great powers and influence are exercised in accordance with law. I would once again emphasize what has often been said before, that "public bodies must be compelled to observe the law and it is essential that bureaucracy should be kept in its place", (per Dancwerts LI in *Bradbury v. London Borough of Enfield*.)" In fact, that speech by Raja Azlan Shah Ag CJ (Malaya) (as His Majesty then was) in the *Sri Lempah* case (*supra*) had encapsulated the very essence of the rule of law, as opposed to the rule by law. On the other extreme end of the spectrum on the notion of justice, the once great Napoleon Bonaparte had once said, on the pretext of serving one's nation, he cannot commit any wrong! But the bold truth and that truth be told, is that, in an enlightened society, which every nation state strives to morph into and become, every exercise of conferred power is but circumscribed, if not expressly by the enabling statute, then by the court which will ensure that power is exercised within acceptable reason. Otherwise, an arbitrary exercise of power will be struck down for being perverse and thus rendering it susceptible to the crucibles of the court's scrutiny by way of judicial review on application by an aggrieved party, by reason of its perversity. In this case, to be fair to the Bursa, in her defence, Madam Yew did say further in para. 54 in the same affidavit as follows:

> In this regard, the Bursa enforcement proceedings ought to be treated as distinct and independent proceedings from that of the judicial system and as long as there is no evidence of *mala fides*, Bursa should be left to proceed with its enforcement proceedings concurrently or otherwise with judicial proceedings.

To my mind, that was a frank attempt by Bursa to remain *intra vires*. It showed that the Bursa was aware of the need to act within its powers. But, it must be recalled that *mala fide* is a state of things that is devoid of *bona fide* and *bona fide* presupposes absence of anything that is contrary to law or justice. In other words, *male fide* connotes a lack of good faith, exercising the discretion by applying a misconceived power, when the Bursa was not conferred with such power to begin with, namely the issuing of the restoration order, would surely and squarely fall into the basket with the label *mala fide* stamped on it. In the case of *Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union* [1995] 2 CLJ 748 (Civil Appeal No: W-04-1494), it was clearly spelt out by learned Justice Gopal Sri Ram JCA (as he then was) that there was no room for a public official or authority to commit any error of law in coming to a decision. By miscomprehending that it had the purported power to impose an order of restitution when in fact and in law, it had none, the Bursa had committed this fatal error of law and such decision in the form of the imposition of the orders of restoration against both the applicants cannot be sustained nor could they be allowed to remain to be enforceable against the two applicants. As was stated by learned Justice Gopal Sri Ram JCA (as he then was) with his usual lucidity, in his concluding remarks in the *Kesatuan Kenderaan Melayu Kelantan* case (*supra*), and I quote:

> It is therefore quite clear that the Court made an error of law in the second Award. It is unnecessary for me to ascertain whether that error goes to jurisdiction: suffice that it is an error of law. In the circumstances of the present appeal it happens that the error in question is jurisdictional: but as I have said earlier that is not of the essence.

In echoing his similar sentiment on the issue, learned Justice VC George JCA had expressed the following in his speech in the same case, which I am now quoting for clarity:

> In effect what Lord Diplock said in *O'Reilley v. Mackam (supra)* is that inferior Courts and statutory tribunals and other authorities are not given the jurisdiction to make an error of law and it follows that such errors of law, whether on the face of record or not, in reality goes to jurisdiction

> in that the decision maker had not been given the jurisdiction to make errors of law. Accordingly I would respectfully concur with Justice Gopal Sri Ram in his holding that the decision of the Privy Council in Fire Bricks is no longer good law.

Likewise, in this case before me, the Bursa with respect had fallen into an error of law when it imposed the orders of restoration against the 2 Applicants, on the misconceived belief that sub-paragraph 16.17 well from which such orders can be said to find their legitimate legislative origin.

(4) The learned counsel for the Bursa had also cited a few foreign decisions in support of his submissions that the Bursa was entitled to impose the impugned orders of restoration against both the applicants in the two cases before this court, and one of those cited cases had been the *Canadian* case of *Garland v. Consumers Gas Co* [2000] OTC 266 ('the *Ontario* case') for support to his proposition that power of restitution was possible. It was held in that case as follows:

> The Ontario Energy Board (OEB) is the most appropriate forum to deal with the matters outlined in the Plaintiff's cause of action. While the (OEB) Act does not formally provide for restitution or permanent injunctions, it does provide the Board with a broad power to fashion appropriate orders and attach relevant conditions, in order to meet its objective or providing just and reasonable rates. In Garland the discretion given to the OEB is in these terms:
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> (at paragraph 17) Section 23 (section 16, OEBA, 1990) provides in part:
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> 23. The Board in making an order may impose such conditions as it considers proper and an order may be general or particular in its application.

Having read that case, I am in agreement with learned counsel En Razlan Hadri, that the circumstances in that case can be readily distinguished from our two cases. One must look at the LR to see the scheme of the penalty provisions and then

A compare the same, as one must, with the provisions as contained in the legislation that was under review in the *Ontario* case (*supra*). As was reiterated above by me, in the scheme of things under the parent statute of Bursa, namely the CMSA 2007, restitution, an order that is synonymous
B with an order of restoration is carved out as a relief that requires a prior court order before one such order can be enforced either by an aggrieved party or by the Securities Commission. Keeping in mind that scenario, it would indeed be an anomaly of great proportion if the Bursa, through the
C AC can impose an order of restoration against a person who has been adjudged to have breached the LR of the Bursa, on a purported exercise by the AC of its power under sub-paragraph (viii) to paragraph 16.17 that was quite similarly worded as the Ontario provision, as follows: "(viii) any other
D action which the Exchange may deem appropriate." At the risk of being accused of being repetitive, this court is of the considered view that in the scheme of things, having in mind the overall legislative framework governing the regulation of the capital market as contained in the CMSA 2007 and the LR
E of Bursa, with respect, the wordings of sub-paragraph (viii) to para. 16.17 of the LR are not meant to include the conferment of power on the Bursa to impose an order of restoration such as the ones that it had imposed on the two applicants in the cases before this court. So the *Ontario* case
F (*supra*) could not assist the *Bursa*'s case moving forward, on the restoration order issue.

[4] Having said that with regard to the orders of restoration, however, with respect, I am in agreement with learned counsel
G Mr Leong for the Bursa, that there is no illegality, irrationality nor any impropriety that could be attributed to both the decisions in so far as they related to the finding of liability on both applicants for the breaches for which they had been found to be liable as charged.

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[5] I found that the Bursa had instituted a proper enforcement action against both the applicants. The LR provide for a parallel action that can be taken by the Bursa despite an action having been taken against the company for breach of contract in the

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courts. The action against both the applicants by the Bursa was based on their actions that were deemed by the Bursa as having breached the clear provisions of the LR. The Bursa had interpreted the word 'advance' the way they did by referring to the Black's dictionary. This court did not see anything amiss in that action by Bursa. In reaching the conclusion which it did, the affidavit in reply by the authorised officer Bursa had averred to the various factors that the Bursa, through the LC and the AC had considered before deciding that both the applicants were liable for the losses suffered by LIQUA as a result of the applicants' conduct in the distribution agreement which clearly put the interest of LIQUA in great jeopardy *vis-a-vis* Wynsum. Both had authorised the payment of monies eventhough the products were not yet delivered to LIQUA. Having considered the said affidavits in reply, this Court is of the considered view that the Bursa had not committed any of the commissions or omissions amounting to errors, in the course of deciding the charges against the two applicants in the Wednesbury's* sense, that otherwise would have justified this court's curial intervention.

[6] As regards the alleged breach of natural justice in the handling of the hearing by the LC and the appeals of both the applicants by the AC, this court is of the considered view that the Bursa had carried out the mechanisms within the legal ambit of the framework as provided by the LR. The law is that as long as substantial justice is meted out by the AC the demands of natural justice are met. And, substantial justice means as long as the two applicants have been accorded with reasonable opportunity to present their respective case, then substantial justice has not been denied to the two applicants. From the affidavit in reply in both cases by Bursa, the averments contained therein had, to my mind clearly shown that the two applicants had been rendered the reasonable opportunity to present their cases. From an anxious reading of the said affidavits in reply by Bursa, this court is satisfied that substantial justice had been meted out to the two applicants. The law is clear, Bursa as an independent body is entitled to carve out its own in-house procedure and there is no law to say that all hearings must be by way of oral hearing only and nothing else. There is no law to say that any departure from that regime must mean that the whole proceeding must be struck down as being void and of no effect on account of a breach against natural justice. The law in this area of jurisprudence is grounded not on absolute justice, but rather on substantial justice.

[7] The fines imposed on both the applicants had been so imposed after the AC had considered all the relevant factors that ought to be considered. No one could quarrel with the findings by the Bursa that the breaches were serious in nature. The public listed entity, namely, LIQUA that the applicants as senior management office bearers was supposed to protect, had been utterly let down by the applicants. To the mind of this court, a reasonable tribunal similarly circumstanced would have reached the same conclusion as did the AC on the amount of the fines imposed on the both the applicants. As such, this court has found no reason whatsoever to interfere with such fines as imposed on both the applicants.

[8] The learned counsel for the Bursa had cited numerous cases on these points and I agree with him and as such, I see no point in belabouring those issues any further. As such, this court sees no merit in both the applicants' complaint on these other issues against the Bursa. As was earlier on indicated at the beginning of this judgement, this court only found the orders of restoration to be *ultra vires* the power of Bursa and to dispel all doubts, this court is with the Bursa on all other issues with regards to the complaints leveled against the impugned decisions of Bursa by the two Appellants.

[9] As to costs, each party is ordered to bear own costs.

Order accordingly.